

APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 81

CLARENCE WILLIAMS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

For Defendant:

Apr. 28, 1967 Minute Entry: On motion of Henry L. Zalut, Assistant United States Attorney, it is ordered that a summons issued for each of the defendants returnable Monday, May 8, 1967, at 2:00 p.m. in Court room No. 3

Apr. 28 1967 Issue summons for each of the defendants.

May 3 File Summons returned by Marshal executed as to deft. Williams by certified mail.

May 3, 1967 File Summons returned by Marshal executed as to deft Jackson by certified mail.

May 4 File Transcript of Proceedings before the U. S. Commissioner

May 8 Minute Entry: Defts, present with counsel, Karl N. Steward and arraigned; waive reading of the indictment; copy previously given to each deft. Each of the defts. pleads not guilty as charged. It is ordered that this case is continued to a later date for trial setting.

May 9, 1967 File Petition of Clarence Williams for Return of Property Illegally Seized.

June 5, 1967 File Defendant's Notice of Hearing Petition for Return of property Illegally Seized for July 3, 1967 at 10:00 A.M.

July 3, 1967 Minute Entry: On the hearing of Deft Williams' Petition for Return of Property Illegally Seized. Morton Silver and Richard Gormley, Asst. U. S. Attys, present for Govt. Karl Stewart present with deft. Williams. It is ordered that the Petition and Notice of hearing herein is transferred to Case No. Civ-6321 Phoenix.

Dec. 5 Minute entry: On motion of Larry Turoff, it is ordered that this case is set for trial before Judge Copple on Jan. 10, 1968 at 9:30 a.m.

Dec. 8, 1967 Mail notice to counsel re trial setting.

Dec. 19, 1967 Minute entry: It is ordered that Deft's Motion to vacate trial setting and directing that cause be tried subsequent to pending cause is set for hearing December 20, 1967 at 3:30 p.m.

Dec. 19 1967 File Defts' motion to vacate trial setting and directing that cause be tried subsequent to pending cause.

Dec. 20 1967 Minute Entry: Deft's motion to vacate trial setting and directing that this case be tried subsequent to pending cause. John Moran present for the Govt. Karl Stewart present for deft. Williams. Murray Miller present for deft. Jackson. Counsel for deft. Williams states that he was counsel of record for both defts. but that he is unable to continue as counsel for

both defts. and has requested that Murray Miller represent deft. Jackson. Murray Miller states that he has not been formally retained by deft. Jackson but that he expects to be sometime this week. Said motion is now argued. It is ordered that the defendant's motion to vacate trial setting is denied. Subsequently, trial date of January 10, 1968, is vacated and this case set for trial January 16, 1968, at 9:30 a.m.

Jan. 11, 1968 File Defts' Motion to Suppress Illegally Seized Evidence, and Memorandum.

Jan. 12, 1968 Minute entry: Motion to Suppress comes on for hearing. Phillip Malinsky appears for the Government. Murray Miller and Karl Stewart appears for the defendant Clarence Williams. Defendant Jackson is not present. Hearing is now had. It is ordered that said hearing be continued to 9:30 o'clock Jan. 15, 1968.

Jan. 15, 1968, Minute entry: Motion to Suppress on for further hearing. Phillip Malinsky present for Government. Deft Clarence Williams present with Karl Stewart and Deft Arlene Jackson with counsel, Murray Miller. Proceedings are now had: Motion of counsel for Clarence Williams to see files of Harry J. Watson is denied. It is ordered that deft's Motion to Suppress evidence is taken under advisement.

Jan. 16, 1968 File Defts' Motion for Severance and Separate Trial, and Defts' Motion to Dismiss.

Jan. 16, 1968 Minute entry; In chambers: Phillip Malinsky and Morton Sitver present for Government. Murray Miller present for defendant Arlene Jackson and Karl Stewart present for Clarence Williams, Counsel for government moves to strike from the Indictment certain portions namely: 133.560 grams of cocaine and said Motion is hereby granted. Motion of Defts for severance of separate trials is denied. On for trial. Phillip Malinsky and Morton Sitver present for Govt. Deft Clarence Williams present with counsel Karl Stewart and Deft Arlene Jackson present with counsel, Murray Miller. Jury empaneled. Enter

proceedings of trial. Counsel for defts moves to invoke the Rule and all witnesses are excluded from courtroom, except Harry Watson. Enter proceedings of trial. Counsel for deft Jackson moves for a mistrial. Said motion is denied. Counsel for deft Jackson renews motion for mis-trial. Said motion denied. Govt's Exhibits 1 through 5 admitted in evidence. Counsel for deft Jackson moves court for a continuation of hearing on motion to suppress evidence. Said motion is denied. At 4:50 o'clock P.M. Jury admonished and excused to 9:30 o'clock A.M. January 17, 1968. On behalf of Deft Williams, counsel moves court to grant motions that were taken under advisement during motion to suppress hearing and it is ordered that said motions are denied. Counsel for Deft. Williams moves court to grant motion to suppress all exhibits heretofore offered in evidence and it is ordered that said motions are denied. Both counsel for deft Jackson and deft Williams move court for a judgment of acquittal and it is ordered said motions are denied. Order Motion of deft Jackson for a mistrial is denied. At 5:00 o'clock, order recess to 9:30 A.M. Jan. 17, 1968, to which time defts and counsel are excused.

Jan. 17, 1968 Minute entry: On for further trial Jury, Defts and all counsel being present pursuant to recess further proceedings are had. Counsel for defendants renews motions for Judgment of Acquittal and it is ordered said motions be denied. Jury retire at 12:15 P.M. to consider their verdicts. It is that the marshal provide meals for jurors and bailiffs during deliberation of this case at the expense of the govt. At 3:15 o'clock P.M. the jury return a verdict of guilty, on each defendant. Jury polled. It is ordered that the jury be discharged from further consideration of this case and excused until notified. Order that this case be set for sent. Feb. 5, 1968 at 2:00 P.M. Deft remain on bond.

Jan. 17, 1968 File Jury List Jan. 17, 1968 File Verdict of deft Jackson of Guilty.

Jan. 17, 1968 File verdict of guilty as to deft. Clarence Williams.

Feb. 5, 1968 Minute entry: On for sentence. It is ordered that sentencing of defts be continued until Feb. 19, 1968 at 2:00 p.m.

Feb. 19 Minute entry: On for sentence. Lawrence Turoff pres. for Govt. Murray Miller pres. for deft. Jackson. On motion of Mr. Miller, it is ordered that this case be cont. to Feb. 26 1968 at 2:00 p.m. and that Motion for Judgment of Acquittal be heard at 10:00 a.m. on said date.

Feb. 19, 1968 File Motion for Judgment of Acquittal as to deft. Arlene Jackson, and memo.

Feb. 23 File Govt's Opposition to Motion for Judgment of Acquittal.

Feb. 23, 1968 File Deft's Notice of Hearing Motion. for Judgment of Acquittal

Feb. 26, 1968 Minute entry: Motion for Judgment of Acquittal of deft Jackson called for hearing. Defts. both pres. with their counsel. Phillip Malinsky pres. for Govt. Motion argued. It is ordered that said Motion for Judgment of Acquittal is denied. This being time fixed for sentence., defts afforded opportunity to make statement to court etc. and the court renders judgment: deft. Williams committed for period of 10 years; deft. Jackson committed for period of 5 years. Order defendants' bail pending appeal be fixed at \$5,000 as to deft. Williams and \$2,000 as to deft. Jackson. Subsequently, each of the defts. having filed notice of appeal and executed bond pending appeal, said bonds are approved by the court and it is ordered that the defendants be released on bond pending determination of the appeals herein.

Feb. 26, 1968 Enter and file Judgment, deft. Williams: committed for period of 10 years.

Feb. 26., 1968 Enter and file Judgment, deft. Jackson: committed for period of 5 years.

Feb. 26, 1968 Issue commitment in dup. to marshall as to each deft.

Feb. 26, 1968 Issue notice to marshal re release on bonds pending appeal.

Feb. 26, 1968 File Notice of Appeal by deft. Williams.

Feb. 26, 1968 File Notice of Appeal by deft. Jackson.

Feb. 26, 1968 File bail bond pending appeal of deft. Williams in sum of \$5,000 with Nat'l Auto & Casualty Insurance Co. as surety thereon, approved by the court.

Feb. 26, 1968 File bail bond pending appeal of deft. Jackson in sum of \$2,000 with Nat'l Auto. & Casualty Insurance Co. as surety thereon, approved by the court.

Feb. 27, 1968 Copy of notice. of appeal as to each deft. delivered to U. S. Attorney. Clerk's Statement of Docket Entries mailed to Clerk U. S. Court of Appeals, San Francisco, Calif. with copy of notice of appeal, as to each deft.

Mar. 18, 1968 File Statement of Points upon which defendant Jackson Intends to Rely, and Designation of Contents of Record on Appeal.

Mar. 27, 1968 File Statement of Points upon which defendant Williams Intends to Rely, and Designation of Contents of Record on Appeal.

Apr. 8, 1968 Enter and file order extending time to file record and docket appeals to and incl. April 27, 1968.

Apr. 10, 1968 File Reporter's Transcript of Proceedings, of trial and sentencing.

Apr. 25, 1968 File Reporter's Transcript of hearing on Motion to Suppress .

IN THE
UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLARENCE WILLIAMS and
ARLENE JACKSON,
Defendants.

INDICTMENT
NO. C-17755 Phx.

VIO: 21 U.S.C. 174
(Unlawful Concealment
of Narcotic Drugs)

THE GRAND JURY CHARGES:

On or about the 31st day of March, 1967, in the District of Arizona, CLARENCE WILLIAMS and ARLENE JACKSON, the defendants, knowingly and unlawfully concealed and facilitated the concealment of approximately 124,950 grams of heroin and approximately 133.560 grams of cocaine, narcotic drugs, which as the defendants then and there well knew had been imported into the United States of America contrary to Title 21, United States Code, Section 173.

O. T. CHAMBERS

Foreman

EDWARD E. DAVIS
United States Attorney

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLARENCE WILLIAMS and

ARLENE JACKSON,

Defendants.

NO. C-17755

MOTION TO SUPPRESS

ILLEGALLY SEIZED EVIDENCE

COME NOW the defendants, CLARENCE WILLIAMS and ARLENE JACKSON, by and through their attorney undersigned, and move this Court to suppress all evidence seized in the search of the home of defendant Jackson at 1402 East Granada, Phoenix, Arizona, on or about March 31, 1967, for the reason it was seized as a result of an illegal search in violation of the Fourth Amendment to the United States Constitution and Article II, Section 8 of the Constitution of the State of Arizona. This motion is based upon the file in this case, the transcript of the preliminary hearing in Cause No. 52017 in the Justice Court of East Phoenix Precinct No. 2 entitled States of Arizona vs. Clarence Willams and Arlene Jackson, defendants, and the preliminary hearing transcript in Cause No. 403 and Cause No. 404 in the U. S. Commissioner's Court entitled United States of America vs. Clarence Williams and Arlene Jackson; and Arizona Revised Statutes, Sections 13-1441 through 13-1472, and the attached memorandum of points and authorities.

Respectfully submitted this 11 day of January, 1968.

STEWART & FLORENCE

By KARL N. STEWART

Karl N. Stewart

Attorney for Defendant

Clarence Williams

MURRAY MILLER

By Murray Miller

Murray Miller

Attorney for Defendant

Arlene Jackson

Copy of the foregoing
delivered this 11 day
of January, 1968, to

U. S. Attorney's Office
Federal Building
Phoenix, Arizona

KARL N. STEWART

Karl N. Stewart

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,
Plaintiff

vs.

CLARENCE WILLIAMS,
Defendant.

NO. C-17755 Phoenix
JUDGMENT AND COMMITMENT

On this 26th day of February, 1968, at Phoenix, Arizona came the Attorney for the Government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon plea of not guilty and verdict of guilty of the offense of violating Title 21, Section 174, United States Code (Unlawful concealment of narcotic drugs), as charged.

The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WILLIAM C. COPPLE
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLARENCE WILLIAMS and
ARLENE JACKSON,
De Defendants.

No. C-17755-Phox.

STATEMENT OF POINTS UPON WHICH
DEFENDANT INTENDS TO RELY AND
DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

STATEMENT OF POINTS

The Defendant, CLARENCE WILLIAMS, by and through his attorneys, STEWART & FLORENCE, respectfully sets forth the following points upon which he intends to rely in the above entitled case on appeal:

1. The admission by the Court of evidence, oral and documentary, over objection that the proper foundation was not laid;
2. The admission by the Court of evidence, oral and documentary, over the objection that such evidence was irrelevant, incompetent and immaterial;
3. Failure of the Court to enter a judgment of acquittal on Defendant's Motion at the close of the Government's case and at the close of the entire evidence as to all counts of the indictment on which the Defendant was convicted, for the reason that

the evidence was and is insufficient upon which to base a verdict of guilty; and

4. Failure of the Court to grant Defendant's Motion to Suppress the evidence. DATED this 25th day of March, 1968.

Respectfully submitted,

By: KARL N. STEWART
STEWART & FLORENCE

(Karl N. Stewart)

Attorneys for Defendant Williams

1140 East Washington

Phoenix, Arizona

KARL N. STEWART

COPY of the foregoing mailed
this 25th day of March, 1968, 59:

U. S. ATTORNEY

Federal Building

Phoenix, Arizona

KARL N. STEWART

Karl N. Stewart

UNITED STATES COURT of APPEALS
FOR THE NINTH CIRCUIT

CLARENCE WILLIAMS and
ARLENE JACKSON,

Appellants,

vs.

UNITED STATES OF AMERICA,

No. 22,871, 22,870

[October 17, 1969]

Appeal from the United States District Court
for the District of Arizona

Before: BROWNING, CARTER, and HUFSTEDLER, Circuit
Judges

HUFSTEDLER, Circuit Judge:

Williams and Jackson were jointly tried and each was convicted for concealing illegally imported heroin in violation of 21 U.S.C. §174. Both of them appeal, raising the issues: (1) Did the District Court err in denying their motions to suppress the heroin as the product of an illegal search? (2) Did the District Court err in denying their motions for acquittal based upon the insufficiency of the evidence to sustain the jury's implied finding of possession?

We hold: (1) The search was not illegal because Williams' arrest was not as a matter of law a pretext for the warrantless search and because the rule of *Chimel v California* (1969) 395 U.S. 752 does not apply to searches conducted before June we, 1969, the date of the *Chimel* decision; (2) the evidence was insufficient to support Jackson's conviction; and (3) the evidence was sufficient to support Williams' conviction.

Legality of the Search

Jackson and Williams contend that the heroin was the product of an illegal search because Williams' arrest was a pretext for a warrantless search of the Granada Street residence in which he was arrested and because the scope of the search went beyond that properly incident to the arrest.

The Government had probable cause to believe that Williams was a party to a sale of heroin on March 9, 1967. He was not then arrested, but he was kept under surveillance by federal and state law enforcement officers to try to find out the source of the narcotics. On March 30, 1967, federal narcotics agent Watson obtained a warrant for Williams' arrest for the sale on March 9. Federal, state and city officers met at the Federal Building in Phoenix, Arizona, about 8:00 p.m. on March 30 for the purpose of planning the execution of the arrest warrant. There is a conflict in the evidence as to whether a search of the Granada Street residence was discussed at that meeting. Police Officer Gutierrez testified that the residence search was discussed and planned. Other law enforcement officers testified that there was no discussion about searching the Granada Street residence.

After the meeting, the officers circulated in various locations known to be frequented by Williams. During the period from 5:50 p.m. to 11:40 p.m. defendant Williams was constantly on the move. It was not until he returned to the Granada residence shortly before midnight that the officers located him. Shortly after midnight eight officers entered the residence to arrest Williams. Williams was discovered in the living room. The search began almost immediately and lasted for about one hour and forty-five minutes. Federal agent Watson testified that they were looking for contraband, in particular, narcotics, and for Government money which had been used to purchase narcotics.

Defendant Williams contends that this evidence shows that "the arresting officers, knowing they did not have probable cause to obtain a search warrant [for the Granada residence], used the

arrest as a vehicle to circumvent the requirements of obtaining a search warrant." The Government agrees that an arrest may not be used as a pretext to search for evidence without a search warrant where one would ordinarily be required under the Fourth Amendment.

Whether or not an arrest is a mere pretext to search is a question of the motivation or primary purpose of the arresting officer. Improper motivation has been found where the arrest is for a minor offense which serves as a mere "sham" or "front" for a search for evidence of another unrelated offense for which there is no probable cause to arrest or search. (*See Amador-Gonzales v. United States* (5th Cir. 1968) 391 F.2d 308; *Taglavore v. United States* (9th Cir. 1961) 291 F.2d 262.) It has also been found where the arresting officer deliberately delays making the arrest in order to allow the arrestee to enter the premises which the officer desires to search. (*Compare McKnight v. United States* (D.C. Cir. 1950) 183 F.2d 977 with *United States v. Weaver* (4th Cir. 1967) 384 F.2d 879, cert. denied (1968) 390 U. S. 983.)

There is ample evidence to sustain the District Court's finding that the arrest was not a pretext for the search. The search for contraband was related to the nature and purpose of the arrest. The delay in obtaining the arrest warrant was justified by the quest for more evidence and by the investigation to ascertain the source of the narcotics. The officers proceeded with due diligence to execute the warrant after it was issued by serving Williams wherever he could be found. There is not evidence that the officers deliberately passed up an earlier opportunity to arrest Williams on the warrant. We cannot hold as a matter of law on this record that the primary purpose of executing the warrant upon Williams when he returned to the Granada residence was to search that house. (!*RCompare United States v. Costello* (2d Cir. 1967) 381 F.2d 698 with *United States v. James* (6th Cir. 1967) 378 F.2d 88.)

Williams was arrested in the living room of the Granada residence. Following his arrest, the officers searched the whole house. The heroin was found in a container on a closet shelf in the northeast bedroom. *Chimel v. California*, *supra*, held that a search of the house in which a defendant is arrested is no longer within the bounds of a search incident to an arrest and that the constitutional perimeter of such a search is the person of the arrestee and the area "within his immediate control." (395 U.S. at 763.) The Williams search is illegal under the *Chimel* standard, and the heroin should have been excluded from the evidence if the *Chimel* rule applies retroactively to searches conducted before June 23, 1969.

The Supreme Court has expressly left open the question of *Chimel's* retroactivity. (*Shipley v. California* (1969) 395 U.S. 818; *see also Von Cleef v. New Jersey* (1969) 395 U.S. 814.) However, in *Desist v. United States* (1969) 394 U.S. 344, the Court reiterated the guidelines for determining retroactivity of a new constitutional rule first stated in *Linkletter v. Walker* (1965) 381 U.S. 618:

"The criteria guiding resolution of the question implicate (a) the purpose to be served by the new standards, (b) the extent of reliance by law enforcement authorities on the old standards and (c) the effect on the administration of justice of a retroactive application of the new standards." (394 U.S. at 249.)

The Court in *Desist* said the foremost of the three criteria was the first. If the purpose is to deter misconduct of police officers in conducting a search, the new exclusionary rule will have no retroactive effect because that purpose is not advanced by penalizing conduct that has already occurred. The exclusionary rule in such cases, the Court observed, was a procedural device to curb illegal police action and not a rule affecting the integrity of the process for finding the innocence or guilt of an accused.

We are unable to see any meaningful difference between the

purpose or the effect of the exclusionary rule announced in *Katz v. United States*, (1967) 389 U.S. 347, affecting the admissibility of evidence obtained by electronic eavesdropping, and the exclusionary rule announced in *Chimel*, affecting the admissibility of evidence obtained by a search not reasonably incident to an arrest. We conclude, therefore, that the rule of retroactivity stated in *Desist* with respect to *Katz* applies in full measure to *Chimel*. Accordingly, we hold that the rule of *Chimel* applies only to those searches claimed incident to an arrest, conduct after June 23, 1969.

The legality of the search incident to Williams' arrest controlled by the pre-*Chimel* standards stated in *United States v. Rabinowitz* (1950) 339 U.S. 56 and *Harris v. United States* (1947) 331 U.S. 145: Was the search reasonable under the totality of the circumstances? We think it was. The arrest was for the sale of heroin, and the object of the search was the discovery of the contraband and of the Government money used to purchase heroin. As in *Harris*, the nature of the fruits of the crime makes it likely that "they would have been kept in some secluded spot." The search covered the house in which Williams was found and in which he gave every appearance of residing. The search was not of an area more extensive than that permitted in *Harris*.

Sufficiency of the Evidence

The Government's case against both Jackson and Williams rested exclusively upon the presumption from proof of possession stated in section 174. It was therefor incumbent upon the Government to prove beyond a reasonable doubt that each defendant possessed the heroin.

The Government had to prove that each defendant was in constructive possession of the heroin, because neither defendant had actual possession of the narcotic. One has constructive possession of contraband if he knows of its presence and has power to exercise dominion and control over it. (*Figueroa v. United*

States (9th Cir. 1965) 352F.2d 587; *Arellanes v. United States* 9th Cir. 1962) 302 F.2d 603, *cert. denied* (1962) 371 U.S. 930; *Hernandez v. United States* (9th Cir. 1962) 300 F.2d 114.)

Here is the evidence bearing upon the possession issue: When the federal narcotics agents rapped on the door of the Granada residence shortly after midnight on March 31, 1967, Jackson answered the door and admitted the officers. She was fully clothed. The agents walked into the living room and placed Williams under arrest. He was sitting on a sofa in the living room eating a meal from a tray and watching television. He was wearing underwear, a robe, and slippers. After his arrest, Williams went to the northeast bedroom and dressed himself in clothing he took from the closet and the dresser into his room. Both the closet and the dresser contained men's and women's apparel. The heroin was later discovered on the shelf of the closet from which Williams took some of his clothes.

Before the night of Williams' arrest, the Granada house had been placed under surveillance. Jackson had been seen either entering or leaving the house on four or five occasions. There was no evidence that the women's apparel in the northeast bedroom was hers. There was no evidence that she owned or rented the house, or that Williams did so. Jackson's relationship, if any, to Williams was not proved.

To sustain the jury's finding of Jackson's guilt, we would have to decide that from the facts that she was in the house after midnight, that she had been seen entering and leaving the house on several prior occasions, that there was feminine apparel in the northeast bedroom, the jury could reasonably have concluded that she was living in the house and sharing Williams' bedroom, that she had at least joint power to control the closet and its contents, and that she knew the heroin was there. Further, we would have to be satisfied that the jury could have reached those conclusions free from any reasonable doubt, *i.e.*,

that kind of doubt " 'that would make a person hesitate to act' in the more serious and important affairs of his own life." *United States v. Nelson* (9th Cir. 1969).....F.2d....., quoting, in part, from *Holland v. United States* (1954) 348 U.S. 121, 140.) The evidence against Jackson does not rise to that standard, and the case against her collapses.

The evidence of Williams' possession is very different from that of Jackson's. Williams was obviously at home in the Granada residence. He used clothes from the closet in which the heroin was found. He could have reached for the heroin as easily as he reached for his coat. The only ingredient of constructive possession which had to be proved circumstantially was his knowledge of the presence of the heroin. The jury could properly conclude that it was more probable than not that he had the requisite knowledge. From the presence of feminine apparel in the same closet, an inference can be drawn that a woman had access to the closet. But that inference does not contradict the inference that Williams knew that the heroin was in his closet and we cannot say that the inference is so strong as to raise a reasonable doubt that Williams did not know the contraband was there.

The judgment against Jackson is reversed. The judgment against Williams is affirmed.

UNITED STATES COURT of APPEALS

FOR THE NINTH CIRCUIT

CLARENCE WILLIAMS,
Appellant

v.

UNITED STATES OF AMERICA,
Appellee.

No. 22871

APPEAL from the United States District Court for the District of Arizona.

THIS CAUSE came to be heard on the Transcript of the Record from the United States District Court for the District of Arizona.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby if affirmed.

Filed and entered Oct. 17, 1969.

UNITED STATES COURT of APPEALS**FOR THE NINTH CIRCUIT**

Excerpt from Proceedings of Wednesday, December 24, 1969.

Before: BROWNING, CARTER, and HUFSTEDLER, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed November 6, 1969 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

March 24, 1970

Philip M. Haggerty, Esq.
Miller & Haggerty
210 Luhrs Tower
45 West Jefferson St.
Phoenix, Arizona 85003

RE: CLARENCE WILLIAMS v. UNITED STATES
No. 1125, October Term, 1969.

Dear Mr. Haggerty:

The Court entered the following order in the above-entitled case yesterday:

"The petition for a writ of certiorari is granted. The case is placed on the summary calendar and set for argument immediately following No. 1142."

Very truly yours,

JOHN F. DAVIS, Clerk

By HELEN K. LOUGHRAN
(Mrs.) Helen K. Loughran
Assistant Clerk

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,
Plaintiff,

v.

CLARENCE WILLIAMS and
ARLENE JACKSON,
Defendants.

No. C-17755
MOTION
TO
SUPPRESS

Courtroom Number 3
United States Courthouse
Phoenix, Arizona
January 12, 1968

BEFORE:

HON. WILLIAM P. COPPLE, Judge

APPEARANCES:

On behalf of the Plaintiff:
PHILIP S. MALINSKY, ESQ.
On behalf of the Defendant Williams:
KARL N. STEWART, ESQ.
On behalf of the Defendant Jackson:
MURRAY MILLER, ESQ.

this address?

[Witness Harry Watson, Federal Narcotics Agent]

A. Yes, I did.

Q. And when did you do so?

A. The late afternoon of March 30, 1967.

Q. And where was this?

A. The Federal Building, Phoenix, Arizona.

Q. That would have been Commissioner Thomas?

A. Yes.

Q. And who was present with you when you obtained this warrant?

A. Commissioner Thomas and myself, to the best of my recollection.

Q. And this was a warrant of arrest for whom?

A. Clarence Williams.

Q. What was the warrant of arrest for?

A. Well, what was it predicated on, or who was it for?

Q. Well, what was the charge?

A. Illegal sale of heroin.

Q. To have alleged to have taken place when?

Q. To have alleged to have taken place when?

A. March the 9th, 1967.

Q. The alleged sale was not made to you, was it?

A. No.

Q. So that the knowledge of this sale, then, came to you through information and belief on your part?

A. It came to me on direct information from a narcotic

* * * 7

* * * 12

Q. Is it also then your practice, Officer, to make the arrest as soon as possible after the warrant is issued?

A. Under the law I am required to do this.

Q. Now, did you obtain any further information in connection with this sale made on March 9th between March 9th and

the time that you had the warrant issued?

A. Further information regarding the sale on March 9th?

Q. Yes, sir.

A. No.

Q. Were you in town from March 9th to March 30?

A. Most of the time, I believe.

Q. And what reason do you have for not obtaining a warrant sooner, say March 9th or March 10th or March 11th?

A. Between March 9 or March 30 we were still conducting our investigation, we had not culminated this investigation.

Q. Were you looking then for more evidence for the March 9 sale, is that what your are telling us?

A. No.

Q. And from March 9th until March 30th, did you have a Mr. Williams and — did you have Mr. Williams under surveillance?

A. Periodically.

Q. And can you give us some indication as to what that consisted of?

A. Watching him from time to time when he was in town.

Q. Did you personally conduct this surveillance on him at any time between March 9th and March 30?

A. Yes, I did.

Q. Can you tell us, do you know the dates?

A. No, I don't.

Q. Approximately how many times did you have him under surveillance?

A. Several times during that period.

Q. And by several times, could you give us an estimate?

A. More than two, possibly four or five times.

Q. And where di you conduct this surveillance?

A. City —

Q. With Mr. —

A. City of Phoenix.

Q. What specific places did you have him under surveillance?

A. Primarily on the east side, south side.

Q. Well, location-wise, where would that be, his house, on the street, in his place of business, or where?

A. Several locations on the east side of Phoenix primarily.

Q. Can you name them for me?

MR. MALINSKY: Your Honor, I am going to object to this line of questioning. I think the issue is whether the warrant for arrest was immediately executed after it was obtained and is not

THE COURT: Yes. I am curious, Mr. Miller. Is there any requirement that immediately when the evidence of a crime is committed, particularly of the type of this, that it's continuing and may be widespread, that they must immediately cease all further investigations and immediately arrest for that? Doesn't the law enforcement agency have any discretion at all as to further investigation in the hopes of finding further crimes or further participants or verifying chemically or whatever it happens to be, I mean how is the period in between the alleged commission of the alleged crime and the issuance of the arrest warrant material? Now, I can see your point from the time of that issuance of the arrest warrant possibly, but I can not see that there is any requirement that they must immediately go arrest and cease all further investigations into an area like this.

MR. MILLER: Well, we would submit to the Court that the Court would have to be apprised of all the facts and the circumstances surrounding the case, and specifically we are referring to our contention that the investigation that was allegedly conducted and the reasons for the arrest at the place that it occurred and at the time that it occurred was solely, exclusively and primarily, if nothing else, to be able to search the premises without obtaining a search warrant.

Since the premises — well, these facts and circumstances, we would like to bring out, but the reasons we would submit that

the officers had the ability and the authority and at —

THE COURT: Yes, but are they required, are they required to stop and investigate immediately and or make an arrest?

MR. MILLER: Well, let me say first, no, your Honor, no, but if the facts and circumstances for the reasons of obtaining the warrant and arrest at that time and at that place —

THE COURT: Well, I will let you go ahead. I want to give you as much leeway on it—

MR. MILLER: Well, I want to make my position clear, if they used this particular method at the time and place as the subject for searching the premises.

THE COURT: Well, I will let you go on, the objection is overruled.

MR. MALINSKY: Well, may I clarify? I think one of the defendants, Arlene Jackson, is not present at this time. I wonder if counsel waives her present at this time?

MR. STEWART: We waive her presence.

THE COURT: All right.

The objection is overruled. Then go ahead.
you tell me specifically where they were?

A. I couldn't remember all of them, counsellor, the Washington Social Club, the 1200 block on East Madison, the 1400 block on East Granada, north on 7th Street, south of McDowell, in that general area.

Q. And did you also have him under surveillance at the 1402 East Granada, Offocer?

A. Between March 9 and 303

Q. Yes.

A. That's correct.

Q. You personally had this — had him under surveillance at that address also?

A. That's correct.

Q. And how many times would you say that you had him under surveillance at that address?

A. During that period of time?

Q. Yes, sir.

A. Two or three times.

Q. Would it be fair to say that you personally kept your eye on this person for more than a dozen times between the date March 9th and March 30th?

A. No, I wouldn't say that, Mr. Miller. I believe during this period of time that Mr. Williams was out of town for several days.

Q. Well, aside from that, you observed him several times at this Granada address and several times in the various east parts of town, to add them all up, would they come out to at least more than a dozen times, Officer?

A. Six or seven occasions.

Q. Aside from yourself conducting this surveillance you had other officers that conducted their surveillances of this person at such times as you were not present?

A. Sporadic surveillance by several other officers.

Q. And by whom?

A. Sergeant Harris of the Phoenix Police Department, Officer Young, Agent Jordan on one occasion, I believe..

Q. Anyone else, Officer?

A. Not that I can remember off hand.

Q. And do you know how many times Officer Harris conducted any surveillances on Mr. Williams?

A. No.

Q. How many times Officer Young or Officer Jordan conducted surveillances?

A. I couldn't speak for Officer Young, I believe Agent Jordan was one time.

Q. Was Arlene Jackson under surveillance?

A. On one or two occasions in that period.

Q. Just on one or two?

A. That's correct.

Q. Did you conduct this surveillance?

A. One of them, yes.

Q. When and where?

A. I don't remember the date, it was prior to March the 30th, I believe she left the Granada location and went to a market somewhere on 7th and returned to the house.

Q. When you are telling us what you believe, are you telling us you observed her leave the Granada location and go to a market and then come back, or what?

A. That's approximately where she went, I don't remember the date.

Q. Can you give us your best estimate?

A. Two or three days prior to March 30.

Q. Was anyone with you at this time?

A. No.

Q. When she left the house, did you follow her then?

A. Yes.

Q. And do you know what market she went to?

A. No.

Q. And you followed her back to the home?

A. That's correct.

Q. When was the other time that you had her under surveillance?

A. This was prior to March the 9th.

Q. What would be your best estimate?

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A. Excuse me?

Q. Yes, sir.

A. On March the 30th at about 11:45 p.m. I saw Mr. Williams for the first time that day.

Q. And where di you see Mr. Williams, sir?

A. 1403 East Granada.

Q. You mean in the house?

A. Arriving there in his Cadillac.

Q. Had you seen him prior to that time on that day?

A. No, I did not.

Q. Do you know whether or not any officers had him under surveillance at that day?

A. I don't know.

Q. You made no inquiry?

A. I don't believe so.

Q. When was this warrant of arrest in point of time, when was it issued?

A. As I recall, between 4:00 and 4:30 p.m. on March 30.

Q. And can you tell us — strike that.

Did you inform the other officers that you were going to obtain a warrant for Mr. Williams' arrest on March 30?

A. Prior to obtaining the warrant?

Q. Yes, sir.

A. No. Other than Agent Jordan.

Q. Okay. When did you so inform him?

A. The afternoon of March 30.

Q. By that you mean about 1:00 or 2:00 o'clock?

A. About noon time.

Q. And when did you decide to obtain the warrant?

A. March 30.

Q. I mean when, about noon time?

A. Well, during the morning, the latter part of the morning.

Q. And why is it that you did not obtain the warrant until approximately 4:00 or 4:30?

A. By the time I was able to leave my office, it was approximately 10 minutes to 4:00 that afternoon..

Q. You mean you were busy with other work?

A. That's correct.

Q. Now, when you knew of the warrant being issued at approximately 4:30, what did you do to try to execute the warrant?

A. Made arrangements to meet with the Phoenix officers and the State Agents, Agent Jackson, arranged the vehicles.

Q. You say you made arrangements with Agent Jackson; is that correct?

A. That's correct.

Q. And who else?

A. Agent Jordan, Sergeant Harris, and I believe Captain Morgan from the State.

Q. And these arrangements that you say you made, was it by telephone?

A. I called them and arranged them to meet at a certain location.

Q. Oh, you called them at about what time?

A. Between 4:30 and 5:00.

Q. And where did you make arrangements to meet them?

A. As I recall, at the Phoenix Police Department.

Q. And what time did you make arrangements to meet them?

A. I don't think it was any definite time set, later on, Agent Jackson had not arrived from Los Angeles at that time.

Q. Well, let's see. When you called Officer Jordan and Harris and Morgan to make arrangements to meet them at the Police Department, what did you say as far as meeting them?

A. As I recall, we were going to meet there after supper, there was no time set, Agent Jackson had not arrived.

Q. All right. Then did you meet after supper at the Phoenix Police Department?

A. That's correct.

Q. And this was about what time?

A. I would think it would be around between 8:00 and 9:00 p.m.

Q. And who was present at this time?

A. Agent Jordan, Agent Jackson, Sergeant Harris, Officer Young, Officer Quinonez, Officer Stokes, I believe the two State Agents were there, Moody and Robinson.

Q. I am sorry, what was the first name?

A. Moody and Robinson.

Q. Now, Officer, from your wealth of experience in this type of arrests and narcotics, when you obtain a warrant, a Federal warrant for arrest, Officer, to arrest a party, and you state that once the warrant was issued, you are supposed to make as immediate an arrest as you can, who do you use to make the arrest? Do you have anybody in the Federal Government that helps you make arrests, you, know, like U. S. Marshal's people?

A. We arrest our own defendants.

Q. All righty. And in the Federal Government when you are making arrests under the Federal warrants, what do you do then? Do you accumulate normally a Federal Agent, be it narcotics or FBI people or Marshals, go out and assist you when you think it's necessary?

A. No.

Q. Pardon me?

A. No

Q. Well, who assists you?

A. Normally the local police and or State Agents in the area..

Q. And the reason you use them is to give you assistance in case something physically might happen?

MR. MALINSKY: I think the question is what happened in this case, not what is normally done, your Honor. I am going to object to this line of questioning.

THE COURT: Yes. The objection is sustained.

Let's get back to our own case, Mr. Miller, if we may. We will be here a long time this evening if we don't.

Q. BY MR. MILLER: Now, at this meeting that you had after supper at the Phoenix Police Department, I take it that you then go over and how this arrest was going to take place?

A. We discussed it.

Q. Was Agent Jackson, had he arrived at this time?

A. He was in Phoenix at that time.

Q. Did he come down to this meeting?

A. What was that, sir?

Q. I said, did he come down to this meeting?

A. He flew from Los Angeles to Phoenix.

Q. Well, all right. He is in Phoenix, but did he come to this meeting that you had at the Phoenix Police Department?

A. I don't believe he went to the Police Station, no, for obvious reasons.

Q. For obvious reasons, it that what you said? I didn't —

A. I don't believe Agent Jackson would be walking to the Phoenix Police Department, no.

Q. All right. So your testimony was he was not present at this meeting that you had after supper at the Phoenix Police Department; is that correct?

A. Not at that meeting, no, sir.

Q. All right. Well, did you have a subsequent meeting before the arrest?

A. With Agent Jackson?

Q. Yes.

A. Yes.

Q. And at this meeting with all these officers now, were you the agent in charge?

A. For practical purposes, I was.

Q. And how were you planning to arrest this defendant?

A. I don't understand your question, counselor.

Q. How were all these people in this meeting that you had, I guess you discussed how you were going to arrest them, didn't you?

A. Well, we discussed how we were going to locate him.

Q. Okay. How did you arrive at that?

A. Several people entered several different vehicles with the idea of searching several different locations to ascertain the whereabouts of Mr. Williams

Q. And who were they?

A. Who was which?

Q. The several people that —

A. The officers that I enumerated that we met from the Phoenix Police Department and the State Narcotics, what vehicles they entered, I could not tell you.

Q. All right. And then how were you supposed to meet again?

A. We all had radio contact, two-way mobile radio.

Q. Was there any discussion about searching the home on Granada?

A. No.

Q. Now, then when these officers left then to try to locate Mr. Williams, then did you leave, too?

A. Yes.

Q. Adn where di you go?

A. Several locations in the Phoenix area to locate Mr. Williams.

Q. Well, where?

A. Primarily East Phoenix, Granada Street address.

Q. And it's your testimony, Officer, that before you —

A. Excuse me, Mr. Miller.

Q. Yes.

A. I waited — I would like to finish — I waited until

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Q. At the time that you announced that you were a Federal Agent, sir, who was with you?

A. Sergeant Harris.

Q. Anyone else?

A. Not in the immediate vicinity.

Q. And then what happened?

A. Arlene Jackson came to the door and said who was it. I again told her who I was and why I was there and told her to open the door. At this time I am observing Mr. Williams, who had not moved. Arlene Jackson opened the door, entered the house, placed Williams under arrest pursuant to the warrant.

Q. And did you say Mr. Williams had not moved then from the time that you announced who you were until you placed him under arrest?

A. That's correct.

Q. And where was Mr. Williams at the time that you observed him?

A. Sitting on the sofa with his back to the front window watching television, eating.

Q. And he had some of his clothing removed?

A. He had what, sir?

Q. He was not fully dressed?

A. He was seated there with a T-shirt and shorts on and a dressing robe, slippers.

Q. By shorts, you mean his undershorts and no pants?

A. In his underclothes and a dressing robe.

Q. And then you arrested him right then and therein the living room?

A. That's correct.

Q. And handcuffed him?

A. That's correct.

Q. And what did you do with him then?

A. I then informed him of his rights, told him why he was under arrest.

Q. And can you tell me what you said to him?

Excuse me. Who was present at this time?

A. Agent Jordan, Sergeant Harris, and myself in the immediate area.

Q. Were there any other officers in the home or outside the home, to your knowledge?

A. Yes, I believe there was several other officers in the home at that time.

Q. Did you know whom or not?

A. The other officers whom I have just enumerated to you that went with us on the surveillance.

Q. All right, sir. What rights did you tell him?

A. I advised Mr. Williams that he was under arrest for violation of the Federal narcotic laws, that the warrant of arrest was in the custody of the Marshal at Phoenix, that any statements that he made could be used against him, that he could have the services of an attorney, and if he didn't have the funds to have one, that one would be appointed by and for him by the Commissioner at his arraignment.

Q. Then what happened?

A. He didn't say anything

Q. Then what did he do?

A. He then asked me if he could finish his supper.

Q. Did you let him?

A. Yes.

Q. Then what happened?

A. The search of the house was conducted pursuant to the arrest.

Q. Did you conduct the search?

A. Very brief part of it.

Q. Did you order or authorize the search?

A. Yes.

Q. Why?

A. Pursuant to a lawful arrest, under the Federal law, we searched the premises where Mr. Williams lived.

Q. For what reason?

A. The contraband, proofs of the crime, specifically narcotics, Government money, and any other contraband that may be in the house.

Q. Were you looking for anything in particular, and, if so, what?

A. Just commencing a normal search for contraband in a narcotic case pursuant to an arrest.

Q. Officer, where was Mrs. Jackson when you place Mr. Williams under arrest?

A. Where was she?

Q. Yes.

A. I believe she was somewhere in the living room, as I recall.

Q. And at the time that you — that is, the living room that Mr Williams was in; is that right?

A. I believe that the dining room and living room are one unit, they are not partitioned off.

Q. And when you placed Mr. Williams under arrest and handcuffed him, he was then secure?

A. He was what, sir?

Q. He was then secure?

A. Secure in what way?

Q. Well, secure as a prisoner under arrest?

A. I searched him, put the handcuffs on him, and he sat down on the couch.

Q. Do you know who owned the home, I mean of your own knowledge?

A. Who actually has the mortgage?

Q. Yes.

A. No.

Q. Did you know whose home it was?

A. Who what?

Q. Whose home it was?

A. My investigation really — revealed that Arlene Jackson and Clarence Williams live there.

Q. Well, —

A. Although the utilities were in her name.

Q. So your investigation revealed that specifically what — how did you ascertain that?

A. A check of the — excuse me.

MR. MALINSKY: I am going to object to this line of questioning. I think they have lived there, there has been testimony that they lived there.

THE COURT: Oh, he can answer the question.

A. A check of the local utility company.

Q. BY MR. MILLER: Now, when you placed Mr Williams under arrest, what did you tell Mrs. Jackson? I mean did you order her to do anything or place her under arrest, or what did you do with her?

A. No.

Q. What did you do with her?

A. I didn't tell her anything.

Q. Did you tell her to sit down, be quiet?

A. I don't believe that I told her that, no.

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the house, then?

A. The dining room is over in this corner, what would be the dining room, if you had a dining room talbe.

Q. And then the kitchen with —

A. The kitchen was somewhere in the back, I never went to the kitchen.

Q. I see Is there another storage room at the rear of the house?

A. I believe that in this portion of the house there is either a service porch and or a storage room, which probably is part of the kitchen. I don't know what the area would be used for. I know there were several cabinets in there.

Q. Have you been in there or —

A. No, I can see it from here (indicating living room).\$.Q.

Q. All right. Thank you.

NOTE: The witness resumes the stand.

Q. BY MR. MILLER: Officer, you did not have, I take it, a search warrant with you at the time that you searched the premises?

A. No, I did not.

Q. And I take it that to your knowledge Mrs Jackson gave neither you nor any of the other officers permission to search the premises; is that correct?

A. She didn't give me permission to search the premises, no.

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DIRECT EXAMINATION

Q. BY MR. MILLER: State your name and address and occupation, if you will.

A. John S. Harris, 17 South 2nd Avenue, sergeant with the Phoenix Police Department, narcotics detail.

Q. How long have you been so employed?

A. 1959.

Q. Do you know a person by the name of Clarence Williams and Arlene Jackson?

A. Yes.

Q. Did you have an occasion to be present at the arrest of Clarence Williams on March 30, 31 of '67?

A. Yes, sir.

Q. Where was that at, sir?

A. I believe it's 1402 East Granada.

Q. And at that address, sir, did you have occasion to be surveying that area sometime prior to March 30?

A. Yes, sir.

Q. For what purpose?

MR. MALINSKY: Now, if the Court please, I understood that you were going to restrict this hearing to the time—

THE COURT: Well, I think you should specify the time prior to that date, prior to that date is when? Are you talking about on the 30th or the 29th, or when are you talking about?

Q. BY MR. MILLER: Approximately 60 days, within a 60-day period before MKARC ?fl3

MR. MALINSKY: I will object to the question.

THE COURT: He may answer.

A. Yes, sir.

Q. BY MR. MILLER: For what purpose?

A. To determine if Williams resided at that location, to determine when he would leave and return, this sort of thing.

Q. Was the additional purpose to — was he a suspect for narcotics dealings to you in your office?

A. Yes, sir.

Q. And it would be then fair to say that you were investigating him to see whether or not there would be any evidence to arrest him for narcotic traffic; is that correct?

A. I would say that he was under surveillance from time to time.

Q. And was this for the State narcotic, Arizona?

A. Phoenix Police Department.

Q. All right. And during approximately this period of time, say within 60 days prior to the arrest on March 30 or March 31, how often were you at this address?

A. I don't know that length of time.

Q. What would be your best estimate?

A. Probably maybe four or five times.

Q. And how would you situate yourself?

A. I don't understand your question.

Q. Well, I take it you had a stake out when you were there, is that correct, if I may use that term?

A. At times, yes, sir.

Q. Well, during these three or four times that you were out there, where would you locate yourself?

A. At different locations in view of the residence.

Q. Were you ever in the residence prior to the arrest on the evening of March 30 and the morning of March 31?

A. No, sir.

Q. Was anybody in the Police Department to your knowledge prior to that date?

A. No, sir, not to my knowledge.

Q. Sir, when were you first aware that Mr. Williams was going to be arrested?

A. I would say it was about 8:00 p.m. or around that on the 30th of March.

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Q. Who else was present when you had a conversation with Officer Watson?

[Harris]

A. I don't believe anybody was in the office other than the secretary, I believe, was in the next — next room.

Q. When was this, Friday evening?

A. No, this was this morning before 8:30, 8:40, something like that.

Q. How long did the meeting last, that is, the officers' meeting, the meeting on March 30?

A. I don't know, maybe — maybe a half hour, guessing.

Q. And during this half hour, what else did you say?

A. What else other than what?

Q. Other than what you have told us?

A. I don't recall anything.

Q. Were you planning to search the house?

A. Pardon?

Q. Were you planning to search the house on Granada?

A. When?

Q. The evening of March 30 and the morning of March 31?

A. The morning of March 31, yes, sir.

Q. What was said about planning to search the house?

THE COURT: You are referring now, I assume, counsel, during the meeting?

MR. MALINSKY: When was —

MR. MILLER: Yes, sir.

Q. During the meeting, what was said about planning to search the house?

A. Well, we couldn't plan to search the house at that time, we hadn't located the defendant.

Q. Well, then if you were going to locate the defendant in the house, was anything said about planning to search the house at that meeting you had with the other officers?

A. Not that I recall.

Q. And when you say nothing you can recall, Officer, are you stating there could have been some conversation, but you can't bring it back now, or are you certain there was not conversation?

A. Well, I am not certain. However, I don't think we discussed any plans of search.

Q. And what did you do then after this meeting, Omer, with reference to ascertaining the whereabouts of Mrs. Williams?

A. We went to the —

Q. Who is we, you and Officer Watson?

A. Yes, and all of the other officers involved, well, that went to search, to look for —

Q. Where did you go?

A. I believe to first — first to the Granada address.

Q. Who did you go with?

A. Pardon?

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Q. BY MR. MILLER: Other than the Federal warrant, yes, sir.

A. No, sir.

Q. And I take it, then, you had no warrant of arrest or no search warrant to search the premises alone; is that correct? When I say "alone," I am referring to the Phoenix Police Department.

A. That's correct.

Q. Nor did you have any basis to obtain a search warrant, is that correct, to search the premises?

A. I didn't, no, sir.

Q. Now, did you enter the home with Officer Watson?

A. Yes, sir.

Q. That is the front door?

A. Yes.

Q. And would you tell us what you did then as you approached the front door?

A. I believe Agent Watson knocked on the door, either he or myself, Arlene came to the window, which is just west of the door, and flipped the blinds open, I believe one slat of the venetian blinds, and looked out; and Agent Watson was advising them as to who he was and she went — walked back at least out of sight from all appearances away from the door. Agent Watson knocked again and announced as to who he was and the purpose—

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[Witness — Manuel Quinonez, City of Phoenix Police Dept.

A. I don't recall, sir.

Q. And did you take anything else from the house?

A. I haven't refreshed my memory, but to the best of my recollection, I recall another pipe, I believe, it was taken from the kitchen.

Q. Pardon me?

A. A pipe with green leafy substance inside of it.

Q. Anything else taken, to your knowledge, from — by you?

A. By me?

Q. (Nods.)

A. To the best of my recollection, those were the only three items.

Q. How long were you there at the house?

A. Two or three hours.

Q. And during this time, either you or other officers in your presence were more or less searching the place?

A. Yes, sir.

Q. And during this period of time, where was Mr. Williams, to your knowledge?

A. Mr. Williams was, to my knowledge, was in the living room

Q. Being guarded by other officers?

A. He was under arrest, yes, sir.

Q. And where was Mr. Jackson, to your knowledge, dur

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[Witness — Ralph McMillan, State of Arizona Narcotics Officer.

A. Fine.

Q. When did that meeting take place?

A. I believe it was in Agent Watson's office in the Federal Building.

Q. And who was present there?

A. Agent Watson, Agent Phil Jordan, Mr. Fred Dic, myself, Sergeant Harris, Officer Stokes, Officer Yount, I am not sure who else was there.

Q. Okay. Now, what took place at the meeting?

A. I believe it was Agent Watson that said they had a warrant for Mr. Williams' arrest, we were attempting to locate him. Several cars went out looking for him trying to find him.

Q. Excuse me. Just at the meeting, what else was discussed?

A. Primarily all there was.

Q. Nothing was said about setting up another buy?

MR. MALINSKY: I object to getting into this, you Honor. I don't thin —

THE COURT: Well, you are leading your witness. He is your witness, and you are leading him. The objection at least is sustained on the basis of leading your witness.

MR. MILLER: I am trying to refresh his recollection, your Honor. This is certainly —

THE COURT: Well, you have nothing to refresh his

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about this meeting that you had in the Federal Building and said something to go over the search. What did you mean by that?

[Witness — Robert Guttierrez, City of Phoenix Police Dept.]

A. Would you repeat that, please?

Q. Yes. When the attorney asked you about this meeting in the Federal Building, he said something about to go over the search. What did you mean? What kind of search were you going over?

A. Well, search for narcotics.

Q. Yes. Well, this meeting, who was telling you about this, or just how — what was the discussion, just briefly?

A. I couldn't tell you off hand exactly what went on, but it was briefly or more or less that we were to serve a search warrant later on the night on Clarence Williams, and we were to stay on the air for — you know, to get together on the search.

Q. And was there anything said generally speaking about what you were going to be searching for when the search warrant was going to be served?

A. Narcotics.

Q. And who was more or less in charge of this meeting? Was it Agent Watson or Officer Harris, do you know?

A. I would say Agent Watson, yes.

Q. And was he the one that was telling you this?

. No. He was — well, he spoke to everybody —

Q. Yes, what did he say?

A. — in the room.

And then —

Q. I don't mean exactly, I mean generally what was he saying in connection with the search?

A. Agin, that he would like our assistance in serving a search warrant later on in the night. — Q. Okay. And did he let you know where you were going to search, what home or where?

A. Yesa. The address was mentioned and the person also to be served on.

Q. What address was mentioned?

A. I don't recall the address, but it was in the vicinity of 14th Street and Granada, I believe it was northwest corner, the corner house.

Q. Did he say about what time this was going to happen?

A. They didn't mention any specific time, but they just said stay on the air for a meeting later on and get together to serve a search warrant.

MR. MILLER: Thank you very much, Officer.

No questions.

THE COURT: Mr. Stewart?

MR. STEWART: No further questions.

THE COURT: Mr. Malinsky?

MR. MALINSKY: No. No questions.

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[Witness. Harry Watson

A. Yes.

Q. Did you meet with him at any time on the evening of March 30, 1967?

A. Yes.

Q. Where did that meeting take place?

A. I believe in the Federal Building a tiny office.

Q. At approximately what time was that?

A. Approximately 8:00 o'clock, shortly thereafter.

Q. Did you have a search warrant for a search of the premises at 1402 East Granada that eventhin?

A. No, I did not.

Q. Did you have an arrest warrant for the arrest of Clarence Williams for violation of narcotics laws?

Q. Yes, I did.

Q. Did you give instructions to Officer Gutierrez or any one else that a search warrant was to be executed on 1402 East Granada that evening?

A. No, I did not.

Q. What were your instructions?

A. I didn't give any instructions to any of the city or the State agents. I told the sergeant and the State lieutenant that we were going to attempt to locate and arrest Clarence Williams pursuant to a warrant.

Q. Was there any meeting that took place later that evening at 12th Street and Van Buren?